

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI

In re:)	
)	
WILLIAM T. HEBERT and	)	Case No.: 09-48378-705
MARY HEBERT,)	
	)	Chapter 7
Debtors,)	
)	
PAUL BONO,)	
	)	Motion to Dismiss or in the Alternative
Plaintiff,	)	Motion for More Definite Statement
)	
v.)	
)	
WILLIAM T. HEBERT and	)	Adversary Case No. 09-4270-399
MARY HEBERT,)	
)	
Defendants.)	

MOTION TO DISMISS OR IN THE ALTERNATIVE
MOTION FOR MORE DEFINITE STATEMENT

COME NOW defendants, and for their Motion to Dismiss or in the Alternative, Motion for More Definite Statement state as follows:

1. Plaintiff filed an Amended Complaint, a copy of which is attached hereto marked Exhibit A.
2. Plaintiff alleges in paragraph 3 of its Amended Complaint that "this is an action under 11 U.S.C. Section 523 for a determination accepting plaintiff's debt from discharge." Plaintiff fails to allege the particular provision of 11 U.S.C. Section 523 upon which he is basing his claim.

HARTSTEIN LAW FIRM, P.C.

/s/ Lawrence F. Hartstein

LAWRENCE F. HARTSTEIN #10492

Attorney for Defendants

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing Motion was sent via e-mail and U.S. Mail postage prepaid to: Mr. Douglas M. Heagler, Attorney for Debtor, 901 Boones Lick, Suite 1W, St. Charles, Missouri 63301, this 18th day of February, 2010.

/s/ Lawrence F. Hartstein

3. Paragraph 4 of plaintiff's Amended Complaint alleges that plaintiff and Dalkov Fund, LLC entered into an agreement on June 5, 2006. Plaintiff fails to state whether said agreement was verbal or in writing, and if in writing, fails to attach a copy of said agreement to the Amended Complaint.

4. Paragraphs 8 and 9 of plaintiff's Amended Complaint allege the execution of a promissory note which is not identified by date and further a copy of said note is not attached to the Amended Complaint.

5. Paragraph 9 of plaintiff's Amended Complaint alleges that defendant William Hebert made a representation in writing which is not further identified and a copy of said writing is not attached to the Amended Complaint.

6. Plaintiff fails to allege with particularity the circumstances constituting the fraud as required by Federal Rule 9(b).

7. Plaintiff's Amended Complaint fails to state a cause of action for which relief may be granted.

8. Plaintiff's Amended Complaint is not averred with sufficient definiteness or particularity to enable the defendants properly to prepare responsive pleadings.

WHEREFORE, defendants pray for an Order of this Court dismissing Plaintiff's Amended Complaint for failing to state a cause of action for which relief can be granted, or in the alternative ordering Plaintiff to file a More Definite Statement of his Complaint against Defendants.

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

In Re:)	
)	
Williams T. Hebert and)	
Mary A. Hebert,	)	Case No. 09-48378
)	
Debtors,	)	Chapter 7
)	
Paul Bono,	)	Amended Complaint for
Plaintiff,	)	Excepting Debt from Discharge
)	
vs.	)	Adversary case No. 09-04270
	)	Response due: February 24, 2010
Williams T. Hebert and	)	Hearing: March 23, 2010 9:30
Mary A. Hebert,	)	Judge Schermer
	)	5th floor South
Debtors,	)	Thomas F. Eagleton Courthouse
)	

AMENDED COMPLAINT FOR
EXCEPTING DEBT FROM DISCHARGE

COMES NOW, Plaintiff, Paul Bono, by and through undersigned counsel, and for his amended complaint for determination excepting debt from discharge pursuant to 11 U.S.C. Sect 523 respectfully represents un the Court as Follows:

1. Plaintiff is a creditor of the above named debtors and is the holder of an unsecured claim in the amount of approximately \$75,000, plus continuing interest at a rate of 12% per annum.
2. William T. Hebert and Mary A. Hebert, hereinafter collectively "Defendants," are the debtors in the above captioned proceedings.



3. This is an action under 11. U.S.C. Sect 523 for a determination excepting Plaintiff's debt from discharge. This court has jurisdiction pursuant to 28 U.S.C. Sect 1334 and this complaint constitutes a core proceeding;

4. On or about June 5 of 2006, Plaintiff and DALKOV FUND, LLC, entered into an agreement wherein Plaintiff did agree to lend DALKOV FUND, LLC the principal sum of \$50,000 for the purchase of real property.

5. At all times herein defendant William T. Hebert was the Organizer, Registered Agent, Manager and sole Owner of DALKOV FUND, LLC.

6. At all times herein defendants William T. Hebert and Mary Ann Hebert were husband and wife.

7. Defendant William T. Hebert and Mary Ann Hebert had a principal/agent relationship pursuant to Missouri Law.

8. Prior to and after the execution of the Promissory note between Plaintiff and Dalkov Fund, LLC, defendant William Hebert, for and on behalf of DALKOV FUND, LLC, materially and falsely represent to Mr. Bono how Mr. Bono's funds would be invested in real property and falsely represented the priority of and liens that would be placed against such secured investments.

9. Prior to and after the execution of the Promissory note between Plaintiff DALKOV FUND, LLC defendant William Hebert, for and on behalf of DALKOV FUND, LLC, represented to Mr. Bono in writing with the intent to deceive, materially false information regarding the financial status of DALKOV FUND, LLC and Defendants that Plaintiff relief upon in making his investment and the continued deferment of interest payments to Defendants. Defendants.

10. In reliance on the numerous false and intentionally deceptive representations of Mr. William T. Hebert, Plaintiff did lend DALKOV FUND, LLC \$50,000.

11. As a direct result of defendant William T. Hebert's intentional misrepresentation, Plaintiff has sustained monetary damage, including lost interest, court costs and attorney fees.

12. Assets of either DALKOV FUND, LLC or Defendants William and Mary Hebert have been transferred in to the names of William T. Hebert and Mary A. Hebert jointly, or into the names of Limited Partnerships, Limited Liability Companies and/or corporations wholly under the control, ownership and/or management of Defendants.

13. Such transfers were made with the intent to hinder, delay or defraud creditors such as Mr. Bono in that Defendants retained possession and control of the funds lent by Mr. Bono and any portion of property purchased with such funds, and such transfers were not disclosed Mr. Bono, the value received for such transfers were not reasonably equivalent to the value of the subject property such that the value of Mr. Bono's investment was essentially diminished, contrary to the previous and ongoing intentionally false representations to Mr. Bono.

14. By reason of the above actions Defendants committed fraud in obtaining the loan of Mr. Bono and thereafter fraud while acting in a fiduciary capacity to Mr. Bono.

WHEREFORE, plaintiff Paul Bono, respectfully prays that this Honorable Court enter its Order and determine that the debt on which Plaintiff's claim is based is a debt that may be excepted from discharge, after notice and hearing, pursuant to 11. U.S.C. Sect 523(a) 2, Sect 523 (a) 4 or any other such exception to discharge and relief the court finds applicable.

The Law Office of Douglas M. Heagler

/s/Douglas M. Heagler

Douglas M. Heagler, #115112, #48952

Attorney for Debtor

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St. Charles, MO 63301

636 278 2778

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CERTIFICATE OF SERVICE

I certify that a copy of the attached pleading was served either electronically or via U.S. Mail on 2/9/2010 to the following parties:

William T. Hebert
17 Beaujolais
Florissant, MO 63031

Mary Hebert
17 Beaujolais
Florissant, MO 63031

Lawrence F. Hartstein
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/s/Douglas M. Heagler
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